

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 19, 2001 at 10:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Pete Ekegren (R)
Sen. Jim Elliott (D)
Sen. Eve Franklin (D)
Sen. Ken Toole (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Lynette Brown, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 112, 1/20/2001
Executive Action: SB227, SB228, SB185,
SB205, SB183, SB123, SB51,

HEARING ON HB 112

Sponsor: REPRESENTATIVE JOHN BRUEGGEMAN, HD 74, Polson

Proponents: Dal Smilie, Department of Administration,
Lynn Keller, Sec. of State Office,
Pam Bucy, Department of Justice,
Ann Hedges, Montana Environmental Information Center

Opponents: None

Opening Statement by Sponsor:

REP. JOHN BRUEGGEMAN, Polson, stated the purpose of this bill is to clarify in statute what has been practiced for quite some time regarding the records keeping of e-mail. With this bill in statute, it would require that some forms of e-mails are kept as public record just as you might keep a letter. He said some form of law needs to determine what form of communication e-mail to be. **REP. BRUEGGEMAN** said the second provision of the bill adds e-mail to the criminal code similar to telephone calls of harassment. Problems have arisen because of no provisions in the criminal code for e-mail harassment to deal with this.

Proponents' Testimony:

Dal Smilie, Chief Legal Counsel, EXHIBIT(sts15a01) urged passage of this bill. He wants to include e-mail in current law as public records.

Lynn Keller, Secretary of State Office, works with state records. **EXHIBIT(sts15a02)** This bill clarifies that e-mail is a record.

Pam Bucy, Assistant Attorney General, said this bill recognizes changes in technology and how people communicate with one another. This statute assists with prosecution of e-mail harassment. She is also in support of the amendment passed out by Dal Smilie (Exhibit 1).

Ann Hedges, Montana Environmental Information Center, said the public cannot know what the government is doing, its government, its employees unless it has access to the information. All state agencies already do this. This is a good government bill. This bill raises e-mails to the level of something that would have been put in an envelope and had a stamp put on it.

Opponents: None

{Tape : 1; Side : A; Approx. Time Counter : 9}

Questions from Committee Members and Responses:

SEN. PETE EKEGREN said that the Federal government keeps e-mails for a long time limit. He asked **Dal Smilie** if this bill is asking for e-mails to be kept for 30 days? **Mr. Smilie** answered that in this bill, certain types of e-mails would have to be saved on the same retention schedule as letters, but the bulk of e-mail would be saved no more than 30 days. **SEN. EKEGREN** asked **Mr. Smilie** who makes the determination of what is public record?

The various officials, the agency directors, elected officials, and the records committee make that decision.

SEN. JOHN BOHLINGER asked **REP. JOHN BRUEGGEMAN** if he is worried if storage capacity would be a problem? He responded that nothing is changing as far as numbers of e-mails. The e-mails are already there. This bill would simply state that e-mails are treated the same as paper correspondence. If storage were a concern, the people could make a paper copy of the correspondence to keep.

{Tape : 1; Side : A; Approx. Time Counter : 17}

Closing by Sponsor: **REP. JOHN BRUEGGEMAN** closed HB 112.

EXECUTIVE ACTION ON SB 227

SEN. JIM ELLIOTT said he was concerned this bill treated "stateside" servicemen during the Vietnam and Korean conflicts identically as those who served in combat. He did not understand why there wasn't a distinction between those who served "stateside" and those who served in active combat.

SEN. ED BUTCHER said this bill is not good government policy; this is the third time the legislature has dealt with this issue and he opposes the bill.

SEN. JOHN BOHLINGER stated he supports **SEN. WELLS'** efforts and supports this bill.

SEN. EVE FRANKLIN stated she supports this bill, but would like the inclusiveness of the bill looked at.

SEN. KEN TOOLE said he wants to provide a benefit to veterans. He prefers the general fund would fund this bill instead of the retirement system.

SEN. PETE EKEGREN said he agreed with **SEN. TOOLE**.

Motion/Vote: **SEN. ELLIOTT** moved that **SB 227 BE TABLED**. Motion carried 6-2 with Franklin and Bohlinger voting no.

EXECUTIVE ACTION ON SB 228

Motion: **SEN. BUTCHER** moved that **SB 228 DO PASS**.

SEN. BUTCHER said he is concerned about future funding for this bill because of more people taking out from this fund than are contributing money to the account.

SEN. BOHLINGER said after twenty years of employment, the problems can be wearing on the individual. He, therefore, supports this bill.

SEN. DON HARGROVE stated because of the risk and levels of physical activity required, the positions of public safety offices such as highway patrol and police need to be younger. This bill is a retention and recruitment tool. If we can keep people in the position longer, it decreases the costs for training.

Vote: Motion **SB 228** carried unanimously.

EXECUTIVE ACTION ON SB 185

Motion: **SEN. BOHLINGER** moved that **SB 185 DO PASS.**

SEN. TOOLE said this bill aids with criminality versus civil law.

SEN. HARGROVE said this bill would help with criminality versus civil law and it was a good idea.

SEN. BOHLINGER said he is concerned about the repeal of Section 18.

Vote: Motion **SB 185** carried unanimously.

EXECUTIVE ACTION ON SB 205

Motion: **SEN. FRANKLIN** moved that **AMENDMENTS**SB020502.adn **BE ADOPTED.** **EXHIBIT**(sts15a04)

David Niss said the intent of this amendment is to deal only with the situation which an ethics complaint is made against a county attorney. The county attorney is a member of the local review panel and would be active on a complaint involving himself. There are also some counties where the panels don't exist.

Vote: Motion **AMENDMENT** **SB020502.ADN** carried unanimously.

Motion: SEN. TOOLE moved that SB 205 DO PASS AS AMENDED.

SEN. TOOLE asked if candidates are prohibited from placing signs of advertisements? Jim Stipich said the intent in this bill is to prohibit the use of public funds to campaign for someone, but yes, individual candidates can still express their personal political candidates. SEN. TOOLE said he is concerned about confidentiality of a complaint filed.

SEN. HARGROVE repeated a quote "Ethics is different than the rough and tumble finance laws." He said an ethics statute was passed in 1995. He was listed as a sponsor on that bill, yet voted against it.

Vote: Motion that SB 205 (SB020502.ADN) DO PASS AS AMENDED carried unanimously.

EXECUTIVE ACTION ON SB 183

David Niss, Legislative Services, said this bill does two things: 1) it changes the provision of the bill introduced that says the candidate who was opposed by someone spending their own money could spend money up to that amount from any source. This amendment (SB018302.and) changes the language to say except for a corporation. The amendments lift the threshold of amount to a \$16,000 threshold for governor, Lt. Governor, other candidates on the state-wide basis, PSC, and district judge positions. For all other candidates, it leaves the threshold at \$5,000 as in the introduced bill.

Motion/Vote: SEN. FRANKLIN moved that SB 183(SB018302.ADN) **EXHIBIT**(sts15a05) BE AMENDED. Motion passed 6-1 with Elliott voting no.

Motion: SEN. TOOLE moved that SB 183 DO PASS AS AMENDED.

SEN. BUTCHER said this bill won't accomplish what they want it to; he is therefore opposed to this bill.

SEN. ELLIOTT commented on the hand-out from Commissioner Linda Voughey. **EXHIBIT**(sts15a03) He said he opposes this bill.

SEN. TOOLE said this bill will not solve the problem it is trying to solve.

Vote: Motion SB 183 failed unanimously.

Motion/Vote: SEN. ELLIOTT moved that SB 183 (SB018302.ADN) BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 123

Motion: SEN. BOHLINGER moved that SB123 DO PASS.

Motion: SEN. BOHLINGER moved that AMENDMENT SB012301.ADN DO PASS. EXHIBIT(sts15a06) He asked David Niss to prepare this amendment to allow for some flexibility in the development of the budget.

SEN. ELLIOTT said this amendment solves his concerns.

Vote: Motion that AMENDMENT SB012301.ADN DO PASS carried unanimously.

Motion: SEN. BOHLINGER moved that SB012302.ADN DO PASS.

Motion: SEN. BOHLINGER moved SB012302.ADN DO PASS. EXHIBIT(sts15a07)

Discussion:

SEN. BOHLINGER said the purpose of this amendment is to provide some cap as to how much money will be appropriated to the legislative process.

SEN. TOOLE asked SEN. BOHLINGER if when it says "a legislature", does it mean the current session? So, once the legislature has convened, then you can't raise the amount of money?

David Niss stated this amendment limits the legislature to appropriated no more money than was passed in the legislative session prior to the effective date of this constitutional amendment. This means the first annual session would be limited in its appropriation, not the line items, but the total amount to no more than what was appropriated in the last legislature for the last biennial session.

SEN. ELLIOTT said this amendment seems vague to him and he cannot support it.

SEN. BOHLINGER said the intent of this amendment was to limit the amount of money that would be appropriated for the operation of the legislature; for the "feed" bill, not the entire budget.

Motion: SEN. BOHLINGER made a substitute motion that **CHANGE SB012302.adn TO SB012302.A.ADN BE ADOPTED** stating that the legislature may not appropriate more money for the operation of the legislature than was appropriated by the previous legislature as that amount may be adjusted for inflation by the legislature as the legislature may provide.

SEN. ELLIOTT asked if his purpose is to freeze salaries to address the concern of the professional legislator?

SEN. BOHLINGER stated amendment SB012302.adn was well intended, but he could see it will not work.

Motion: SEN. BOHLINGER **WITHDREW MOTION FOR AMENDMENT SB012302.ADN. and AMENDMENT SB012302a.ADN.**

Motion: SEN. BOHLINGER moved that **AMENDMENT SB012303.ADN DO PASS. EXHIBIT (sts15a08)**

SEN. BOHLINGER said this amendment assures a bill would not be carried over to the next session unless voted for by two-thirds vote of the senate.

Vote: Motion **AMENDMENT SB012303.ADN carried unanimously.**

Motion/Vote: SEN. BOHLINGER made a motion that **SB 123 DO PASS AS AMENDED.**

SEN. FRANKLIN said she had always opposed annual sessions, but now sees the benefit of annual sessions.

SEN. BUTCHER said he was concerned about the mechanics of annual sessions and feels this bill would put more time into the interim committees. Because of this, he opposes this bill.

SEN. KEN TOOLE said he was in favor of annual sessions because going two years between sessions is a bad business practice. He said the present system is not serving the citizens well. **SEN. TOOLE** said we need to recognize there are many people in this state that don't have the financial resources to be in the legislature.

SEN. HARGROVE said there is concern in the public about legislators want to be professional legislators. He said the people in Montana want the legislature to meet every other year. **SEN. HARGROVE** said the system is working well with meeting every other year.

Substitute motion carried 5-3 with Butcher, Elliott, and Hargrove voting no.

EXECUTIVE ACTION ON SB 51

David Niss explained amendment **Sb005103.ash. EXHIBIT(sts15a09)** These address the concerns by some of the other parties who testified, that the creation of the VEBA expense account by putting sick leave hours of the state employees into that VEBA would not pass legal muster with the IRS and would not pass legal muster because of section eight where it states that required sick leave already accrued to an employee be put into that account to be used in the future for health care expenses, because the IRS would deem that putting into that account to be what the IRS calls "constructive receipt of the dollar value of those sick leave hours". These amendments are intended to make changes throughout the bill to deal with that issue of constructive receipt. Essentially, those amendments give the Department of Administration two choices to hand to the IRS; 1) develop a plan that lets employees with already accrued vacation leave hours or 2) do it on a prospective basis so it is not on what has already accrued, but what will accrue in the future. That makes a substantial difference in the eyes of the IRS. It gives the department the duty to present those two plans in the alternative to the IRS.

SEN. HARGROVE said it also changes the hours from 120 hours to 240 hours.

Motion/Vote: SEN. BOHLINGER moved that **AMENDMENT SB005103.ASH DO PASS. Motion carried unanimously.**

Motion/Vote: SEN. BOHLINGER moved that **SB 51 DO PASS AS AMENDED. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 12:00 A.M.

SEN. DON HARGROVE, Chairman

LYNETTE BROWN, Secretary

DH/LB

EXHIBIT (sts15aad)